

9-20472A-06-0535



ORIGINAL

To : Michael Daily

From : Michael Hannan

Date: 1/17/2007

FAX (602) 594-7478

I agree to let all witnesses testify by telephone.

Witness List:

- 1. Monte Warlich
- 2. Walt Smolenski
- 3. Monti Beck
- 4. Sam Ahdoot
- 5. Steven Johnson
- 6. Tony Manasseri
- 7. Robert Cummings
- 8. Pink Coyote (Janet Jones)
- 9. Herbert Beigel

Attached area list of documents labeled R-1 to R-3

Michael Hannan

Arizona Corporation Commission
DOCKETED
 JAN 23 2008

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 AZ CORP COMMISSION
 DOCKET CONTROL

Respondent's Proposed List of Exhibits

**In the Matter of The 12 PERCRNT FUND I, LLC, Michael Joseph Hannan, et al
S-20472A-06-0535**

Exhibit No.	Description
R-1	Letter dated September 1, 2006 from Mike Daily to Herbert Beigel
R-2	Motion filed by Michael Hannan, Respondent to Plaintiff John Wood motion for Summary Judgment dated November 28m 2007.
R-3	Under Advisement Ruling filed December 4, 2007 by Hon. Michael Miller denying motion without prejudice to Plaintiff on Exhibit R-2 filing.

R-1

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

BRIAN C. McNEIL
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

September 1, 2006

VIA U.S. MAIL & FACSIMILE (520-326-0181)

Herbert Beigel
10371 North Oracle Road, Suite 102
Tucson, Arizona 85737-001

RE: *In the Matter of The 12% FUND, et al.*, Docket No. S-20472A-06-0535

Dear Herb:

Thank you for speaking to me and Gary this morning. This letter confirms our meeting at our office address listed above on September 12, 2006 at 10:00 a.m., at which time you will bring the documents responsive to the subpoena. Note that I may conduct an examination under oath of Mr. Hannan this fall after we have made further progress in our investigation.

You can find all of the statutes and rules relating to this matter on our website at http://www.ccsd.cc.state.az.us/statutes_and_rules/index.asp; I would print out the "Securities Handbook" which we use in our office. This case will be litigated or settled pursuant to administrative law and rules including, for example, A.R.S. § 44-1971 et seq. ("Article 11. Hearings"), R14-3-101, et seq. ("Rules of Practice and Procedure Before the Corporation Commission") and R14-4-301 et seq. ("Rules of Procedure for Investigations, Examinations, and Administrative Proceedings.").

The later rules should be available through the enforcement section of our website, <http://www.ccsd.cc.state.az.us/enforcement/Administrative%20procedure.asp>. The next step is to file an Answer and request a hearing. It is not a final hearing, but a conference during which we will meet with the ALJ to discuss the status of the case and any issues we have, such as settlement negotiations, how much time we need to prepare for a final, fact finding hearing and how long it will take, how many witnesses we will use, etc. I hope this information helps.

As we discussed, based on your clients own documents and the objective facts, we strongly believe your clients' securities offering is not, and has never qualified for the applicable exemption from registration provided by Rule 14-4-140 ("Accredited Investor Exemption") ("Rule 140").¹ Your clients have the burden of proving actual, strict compliance with all aspects of Rule 140 to qualify for the exemption under A.R.S. § 44-2033. Please note that our investigation is both confidential under A.R.S. § 44-2042, and ongoing (i.e., forensic accounting, etc.) pursuant

¹As you know, your clients claim via their August 2003 Form D that their offering of securities in the 12% FUND is being made under the "private placement" exemption from registration provided by federal Rule 504 of Regulation D (17 C.F.R. § 230.504(b)(1)(iii) & (2)) and R14-4-140(A),(B) of the Arizona Administrative Code (i.e., limited offerings and sales not exceeding \$1 million exclusively to accredited investors).

to the broad investigatory powers afforded us under, inter alia, A.R.S. §§ 44-1822-1825, such that the following objective justifications for non-compliance are not exclusive. That said, and solely in an effort to possibly achieve an early and amicable resolution, the offering is not, and has not been exempt from the registration requirements because:

- RESPONDENTS have provided, and regularly provide information (i.e., detailed PPM, question and answer "faq" pages, subscription documents, purported historical performance data, allegedly professionally audited financial statements, balance sheets, video and audio promotions, promotional e-mails, etc.) well beyond that allowed by the limited, "general announcement" (a/k/a "tombstone ad" with required disclaimers, like Mr. Hannan filed with Colorado) provision of Rule 140(F) to unaccredited investors, in violation of Rule 140(H).
- RESPONDENTS have failed to file a copy of any "general announcement" with the Division as strictly defined by Rule 140(F), in violation of Rule 140(L).
- RESPONDENTS have failed to file a new or amended Form D with the Securities Division for their offering of securities in the 12% FUND necessarily made subsequent to their first offering reflected in their August 2003 Notice Filing (over three years ago), in violation of Rule 140(L). By their own documents, your clients have raised more than \$1 million dollars from investors without filing a new form D. Note this exemption is not self-executing and actually requires paperwork unlike, for instance, Regulation D, Rule 506.
- RESPONDENTS have failed to pay the Division the filing fee required for their offering of securities in the 12% FUND necessarily made subsequent to their first offering reflected in their August 2003 Notice Filing, in violation of Rule 140(L).
- The offer and sale by an issuer in compliance with federal Rule 504 shall be exempt from the registration requirements of A.R.S. §§44-1841 and 44-1842 subject to the various provisions of Rule 140 including, without limitation, Rule 140(M) (the "bad boy provisions"). HANNAN was subject to the "bad boy" provisions at the time of the filing of the Form D. MR. HANNAN is, or was, an officer of a federal or state agency deemed prohibiting or revoking his registration or licensure as a broker or dealer in securities, or as an investment advisor or investment advisor representative, in violation of Rule 140(M)(4), and such disqualification has not ceased as provided by Rule 140(N). Unlike Colorado's statute, there is no time limit set forth in Rule 140(M)(4). Therefore, the exemption from the registration requirements of A.R.S. §§ 44-1841 and 44-1842 was not available to RESPONDENTS.

Also, as you know, sales of securities must be made exclusively to accredited investors. There is no "reasonable belief" or good faith defense for a failure to limit sales to accredited investors under Rule 140(D). Depending on their production of documents, it is possible that your clients cannot prove that each and every investor is accredited, especially if they merely relied on an investor questionnaire completed the investors. Additionally, the Form D personally completed and filed by HANNAN also contains a provision that asks if he was "subject to the disqualification provisions" described in 17 C.F.R. § 230.262 (the "bad boy provisions"). RESPONDENTS' Form D fails to disclose HANNAN's prior securities and investment advisor conduct discussed above, and that he was subject to the disqualification provision of 17 C.F.R.

§ 230.262(b)(3), as evidenced, in part, by the attached SEC final administrative order.² Regardless of applicable A.R.S. § 44-1992(2) relating to the filing false or incomplete statements with the Division, the mere fact that your clients August 2003 Form D is at a minimum, "incomplete," necessarily means that they have not fully complied with Rule 140.

Regardless of the foregoing, we have fraud jurisdiction. Objectively, a reasonable investor would like to know before investing about Mr. Hannan's prior securities and bankruptcy conduct. Additional, material misrepresentations and non-disclosures are discussed in the TC&D. A forensic accounting will determine whether other common fraud-related conduct is present, such as whether this case involves a "ponzi scheme," straight theft or self-dealing without full disclosure. On the later point, your clients' PPM clearly limits how much and when they can receive management fees from investments.

Most importantly, your advice to your clients to stop selling securities and take down their website is well taken. However, please find enclosed documents we printed from your clients' website. (ACC0000835-839). These documents clearly constitute an "offer to sell" or "offer for sale" of securities under A.R.S. §§ 44-1801(15), (26). (i.e., "Should you...like to invest, you may contact us..."). As noted in part above, because the limited liability company membership interests in the 12% FUND are not registered, and none of the RESPONDENTS are licensed as required by law, the offer constitutes yet another violation of applicable law and the plain language of the existing TC&D.

Please advise whether you are willing to accept service of process of the TC&D on behalf of Mr. Hannan's wife, whose name is "Janice" at your earliest convenience. Your clients' cooperation will be a factor in determining whether we can quickly resolve this matter, which will be in everyone's best interests. Regarding the investigation that we need, please provide me with the whereabouts or contact information for Mr. Hannan, and whether he is being represented by counsel.

Finally, formal settlement discussions at this time are premature due to the fact we have not completed our investigation. However, in general terms, any settlement (i.e., consent order) would include findings of fact/admissions, order of restitution and some amount of administrative penalties. Again, based on the level of your clients' cooperation, I may recommend leniency. However, any formal settlement will have to be approved not only by the senior members of my office, but also by the Commissioners themselves.

Thank you, and please call me if you have any questions.

Sincerely,

Mike Dailey
Enforcement Attorney
Securities Division
(602) 542-0722 (direct line)

Enclosures

² Without waiving any attorney-client, work-product or confidentiality privileges under A.R.S. § 44-2042, I am enclosing these public documents to assist you in understanding the issues, solely for purposes of a possible amicable resolution.

1 Michael J. Hannan
13714 N. Nightstar Court
2 Marana, AZ 85658
TEL: (520) 572-0055
3 FAX (520) 572-0055

4 In Pro Per

5
6
7
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 COUNTY OF PIMA

11 JOHN WOOD

12 Plaintiff,

13 vs.

14 THE 12% FUND, et. al.

15 Defendant.
16

Case No. C20073228

**RESPONSE TO SUMMARY JUDGEMENT
MOTION AND REQUEST TO FILE AN
AMMENDED ANSWER.**

Judge: Hon. Michael Miller

17
18 Comes now defendant and on his behalf and all other defendants, ~~excepting Sam Ahdoot and Jane Doe Ahdoot~~, response to the summary judgment motion of plaintiff Trask, as follows.
19

20 **FACTUAL BACKGROUND**

21 At the creation of the of the 12% Fund, defendant Hannan, pursued and received, from attorney
22 Beigel professional advice and opinion as to the legality of the fund and the fact the "securities" being
23 offered by the fund, need "not" be registered with any government agency, and also whether Hannan, et.
24 al., was to be registered as a dealer or salesman.

25 Based upon the opinion and advice given by attorney Beigel that no registration was needed as to
26 Hannan as a salesman /dealer and the "securities" were exempt from registration, the 12% fund was
27 created.

28 The "Confidential Private Placement Memorandum" (CPPM) was co-prepared by and approved

1 by attorney Beigel.

2 **ARGUMENT**

3 1. Plaintiff argument that defendants et. al, sold unregistered securities in violation of section
4 44-1841, is in fact a question of fact that must be determined by the Sample Pleading with format toolbar ~~truer of fact.~~ Defendant Hannan, et.
5 al., relied upon professional advice, that the 12% Fund was indeed All Rights Reserved ~~exempt from registration.~~ The real
6 issue at hand is whether, the 12% Fund, et. al., Hannan, the securities complained of are exempt, as
7 advised by attorney Beigel.

8 The "pending" action of the Arizona Corporate Commission, have no probative value in this
9 court, until such time that the "pending action" is resolved by judgment or stipulation, therefore ,
10 Hannan, et. al., objects to any reference to a reliance upon this agency's "pending action", as relates to
11 this action before this court.

12 2. Plaintiff's argument "Hannan was not a registered dealer/ salesman, is addressed by Hannan
13 et. al., by incorporation of paragraph 1 above as though fully restated herein.

14 Further plaintiffs have not established that Hannan, et. al., was required to be registered, to the
15 contrary, Hannan was professionally advised he did not have to be registered by attorney Beigel.

16 3. Plaintiff's argument, Hannan committed securities fraud is incorrect. In fact in the CPPM, it
17 clearly states " the securities are not registered with or approved by any state securities agency or
18 SEC", which is disclosed in itself.

19 With such disclosure plaintiff could have done her own investigation whether or not such
20 securities were required to be registered or not.

21 As stated above Hannan was professionally advised to the contrary

22 Before this court is not any evidence or fact that this plaintiff relied upon any statement, or
23 omission by Hannan, et. al., in plaintiff's decision making process to invest in the 12% Fund,
24 which reliance is a question of fact to be determined by the truer of fact.

25 There is no fact or evidence before this court as to the extent, plaintiff investigated this
26 investment opportunity prior to investing funds.

27 4. Defendant Hannan, et. at., requests this court allow this defendant, et. al., file an amended
28 answer to plaintiff's complaint.

R.2

1 Said request is based upon the 'conflict of interest' which was created by the filing of this
2 complaint by Trask.

3 Attorney Beigel never advised Hannan, et. al., that because the complaint of Trask was
4 contrary to the advice of attorney Beigel, to Hannan, et. al., a major "conflict of interest" was created in
5 Beigel representing Hannan, et. al.

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Email: info@wordautomation.com

6 In fact the answer filed on behalf of Hannan, et. al., was self-serving for attorney Beigel, as the
7 answer did not set forth any affirmative defense which would have attorney Beigel himself, in a civil
8 action or subject him to litigation.

9 **CONCLUSION**

10 Contrary to plaintiff's position there are disputed facts and facts that must be decided by the truer
11 of fact.

12 Therefore, Hannan, et. al., request this court:

- 13 1. Deny plaintiff's request for summary judgment.;
- 14 2. Allow defendant Hannan, et. al., file an amended answer to plaintiff's complaint;
- 15 3. For such further relief the court deems just and proper.

16 Dated: November 28, 2007

17 

18 Michael J. Harman

19 Defendant / In Pro Per

20
21 Copy of forgoing faxed and mailed on

22 November 28 2007 to;

23 Bruce R. Heurlin, Eric J. McNeilus

24 **KARP HEURLIN WEISS**

25 3060 North Swan Road

26 Tucson, AZ 85712-1225

27 TEL: (520) 325-4200

28 FAX: (520) 325-4224

R-3

FILED
PATRICIA A. NOLAND
CLERK, SUPERIOR COURT

07 DEC -4 AM 11:24

BY: R. ST. GERMAINE, DEPUTY CLERK #20073228

DATE: December 3, 2007

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. MICHAEL MILLER

COURT REPORTER: NONE

JOHN WOOD,
Plaintiff,

v.

THE 12% FUND I, L.L.C., an Arizona limited
liability company, et al.,

Defendants.

UNDER ADVISEMENT RULING

The Court having reviewed Plaintiff's Motion for Summary Judgment, Defendant Hannan's Response, and Plaintiff's Reply,

Plaintiff did not address Defendant's contention that the issue of reliance is question of fact and this Court's own research did not disclose controlling authority.

IT IS HEREBY ORDERED *denying* the motion without prejudice to Plaintiff to refile with additional briefing on the issue of reliance and whether it is a per se material issue of fact.

- Hon. Michael Miller
- Bruce R. Heurlin, Eric J. McNeilus, P.C. Law Firm of Karp Heurlin
- Michael Hannan
- Ryan W. Anderson, Gutilla & Murphy, P.C. Gutilla & Murphy, P.C. - 4150
- Northern
- Herbert Beigel, Herbert Beigel & Associates
- Under Advisement

Jane Booth
Judicial Administrative Assistant